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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/813,819 | 03/31/2004 | Spanky A. Raymond | 1842-0010 | 5056 |
| 28078 | 7590 | 12/26/2007 | EXAMINER | |
| MAGINOT, MOORE & BECK, LLP | | | WOODALL, NICHOLAS W | |
| CHASE TOWER | | | ART UNIT | PAPER NUMBER |
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| SUITE 3250 | | | | |
| INDIANAPOLIS, IN 46204 | | | | |

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/813,819 | RAYMOND ET AL. | |
| | Examiner Nicholas Woodall | Art Unit 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 October 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 8-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 April 2007 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 10/12/2007.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Person (U.S. Patent 5,997,552) in view of Di Giovanni (U.S. Patent 4,478,220).

Regarding claim 15, Person discloses a device comprising a track assembly defining a channel capable of sequentially receiving a plurality of wafers from an introduction end capable of receiving wafers, to a discharge end capable of being positioned within a body space. The track assembly further includes a first track (72) defining a wafer channel opening at said introduction end capable of receiving wafers, a second track (90) coupled to the first track and defining a pusher channel (95), and an advancement mechanism (52, 80, 82, 85) capable of being slid within the pusher channel and capable of operating on a wafer within the wafer channel to advance the wafer in a first direction along the wafer channel toward the distal end. Regarding claims 16 and 19, Person discloses a device wherein the advancement mechanism includes a portion (52) disposed within the pusher channel and at least one finger projection (80, 82, 85) from the portion into the wafer channel capable of pushing a wafer within the

wafer channel. The claim does not limit the finger to be projecting directly from the portion. The two portions are indirectly connected at the proximal end of the device as best shown in Figure 7 of the reference. Regarding claim 17, Person discloses a device wherein said pusher channel defines a discharge opening at the discharge end capable of discharging a wafer into a body space, wherein the wafer channel communicated with the pusher channel adjacent the discharge end, and the track assembly further including a means for diverting a wafer from the wafer channel into the pusher channel (75 and 94) as the wafer is conveyed along the wafer channel. Regarding claim 18, Person discloses a device wherein the means for diverting includes a spring arm (94) mounted within the wafer channel and capable of guiding a wafer from the wafer channel to the pusher channel. Regarding claim 11, Person discloses a device further comprising an advancement gun supporting the track assembly and having an operable trigger operably coupled to the advancement mechanism such that depressing the trigger slides the advancement mechanism in the first direction within the pusher channel. Regarding claim 12, Person discloses a device wherein the advancement gun includes a housing and the trigger is capable of being pivotally mounted within the housing. Regarding claim 13, Person discloses a device wherein the advancement gun includes a linkage coupled between the trigger and the advancement mechanism capable of translating pivotal movement of the trigger into linear movement of the mechanism within the pusher channel. Person fails to disclose the wafer channel further comprising a means for preventing retrograde movement of a wafer within the wafer channel in a second direction opposite the first direction. Since claim 15 meets the three

prong analysis from 35 U.S.C. 112 6th paragraph, the "means for" language must be construed towards the corresponding structure as described in the specification, which the examiner is interpreting as the resilient prongs formed in the channel. Di Giovanni teaches a device comprising a track assembly that further includes a plurality of resilient prong members formed along the upper and lower surfaces of the channel within the track assembly (claims 8-10 and 15; column 12 lines 22-68 and column 13 lines 1-42) in order to prevent backwards movement of the elements being moved through the device (column 13 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Person further comprising a plurality of resilient prong members formed along the upper and lower surfaces of the channel within a track assembly in view of Di Giovanni in order to prevent backwards movement of the elements being moved through the device.

Regarding claim 8, the combination of Person and Di Giovanni disclose a device wherein the means for preventing retrograde movement includes at least one resilient prong arranged within the track assembly channel capable of preventing movement of a wafer in the second direction and to deflect as a wafer passes the prong in the first direction. Regarding claim 9, the combination of Person and Di Giovanni disclose a device wherein the means for preventing retrograde movement includes a plurality of resilient prongs spaced along the length of the track assembly channel from the introduction end to the discharge end. Regarding claim 10, the combination of Person and Di Giovanni disclose a device wherein the plurality of resilient prongs are provided in opposing pairs of prongs disposed on opposite sides of the track assembly channel.

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Person (U.S. Patent 5,997,552) in view of Di Giovanni (U.S. Patent 4,478,220) further in view of Yoon (U.S. Patent 5,782,844).

Regarding claim 14, the combination of Person and Di Giovanni discloses the invention as claimed except for the advancement mechanism includes a rack gear and the trigger includes a clock gear capable of meshing with the rack gear as the trigger is pivoted. The combination of Person and Di Giovanni disclose a device comprising an advancement mechanism including a linkage and a trigger as discussed above wherein the linkage couples the advancement mechanism and the trigger in order to translate rotational movement of the trigger into linear movement of an advancement mechanism. Yoon teaches a device comprising an advancement mechanism including a linkage and a trigger wherein the linkage comprises a rack gear and the trigger includes a clock gear capable of meshing with the rack gear in order to translate rotational movement of the trigger into linear movement of an advancement mechanism (column 7 lines 66-67, column 8 lines 1-67, column 9 lines 1-67, and column 10 lines 1-9). Because both the combination of Person and Di Giovanni and Yoon disclose a device comprising an advancement mechanism including a linkage and a trigger wherein the linkage couples the advancement mechanism and the trigger in order to translate rotational movement of the trigger into linear movement of the advancement mechanism, it would have been obvious to one having ordinary skill of the art at the time the invention was made to substitute one linkage with the other in order to achieve the predictable result of

translating rotational movement of the trigger into linear movement of the advancement mechanism.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Person (U.S. Patent 5,997,552) in view of Di Giovanni (U.S. Patent 4,478,220) further in view of Woods (U.S. Patent 5,190,560).

Regarding claim 20, the combination of Person and Di Giovanni disclose the invention as claimed except for the device further comprising a cartridge capable of carrying a plurality of wafers to be inserted into the body space, wherein the cartridge is capable of being coupled to the track assembly so a wafer from the plurality of wafers enters the introduction end of the track assembly. Woods teaches a device comprising a cartridge capable of carrying a plurality of wafers to be inserting into a body space, wherein the cartridge is capable of being coupled to the track assembly so a wafer from the plurality of wafers enters the introduction end of the track assembly in order to provide the device with enough elements, such as wafers, to complete a surgical procedure without having to refill the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Person modified by Di Giovanni further comprising a cartridge in view of Woods in order to provide the device with enough elements to complete a surgical procedure without having to refill the device.

Response to Arguments

6. Applicant's arguments with respect to claims 8-20 have been considered but are moot in view of the new ground(s) of rejection. The examiner has presented new

grounds of rejection as necessitated by the applicant's showing of common ownership of the previously used Johnson reference making this office action non-final.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EDUARDO J. ROBERT
SUPERVISORY PATENT EXAMINER

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